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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/844,627

Applicant(s)

ABBE, NANCY A. *CA*

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9,13-17,19,20,24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9,13-17,19,20,24 and 26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 1-9, 13-17, 19, 20, 24 and 26 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1 states the outer wall being translucent in line 7. Translucent is defined as transmitting light but causing sufficient diffusion to prevent perception of distinct images. In lines 7 and 8 of claim 1, it is stated that a label placed in the label area may be read (through the outer wall). This doesn't seem possible since the translucence of the outer wall would distort the image to prevent perception. Changing the word "translucent" to "transparent" would eliminate this rejection.

omit

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

omit

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

omit

Claim 24 is indefinite because it states that the lids stacking structure may be engaged with a container bottom of a food storage container. There is already a container claimed for the food storage unit of claim 1. It can't be determined if another container is being referred to or if

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the food storage container is the container claimed in claim 1. This limitation could be made definite by stating that "a second" or "another" container is being engaged.

omit Claim 24 recites the limitation "said food storage" in line 5. There is insufficient antecedent basis for this limitation in the claim. It can't be determined whether a food storage unit or a food storage container is being referred to and it can't be determined which food storage container or unit is being referred to.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9, 13, 15, 19, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Oxley.

Oxley discloses a food storage unit comprising a container with an inner wall (F), an outer translucent/transparent wall (E), a channel is formed in the space between the inner and outer walls, the channel includes a label support area that is accessible, the label support area is defined by a label support member (one of the two lower walls (A)) and a top lid.

Claims 1-6, 9, 13, 15, 20, 24 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Morris ('059)(Morris 1) and Morris ('151)(Morris 2).

Claims 1, 3, 5, 9, 15, 19, 24 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pichereau.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9, 13-17, 19, 20, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barhite in view of Dorney and Greiner ('918)(Greiner).

Barhite discloses the invention except for the translucent/transparent outer wall. Dorney discloses a double wall cup having an outer wall of translucent material. Greiner discloses a double wall bowl with an outer transparent wall. It would have been obvious to modify the material of the outer wall of Barhite to be either translucent or transparent in order to see an item placed within the space between the inner and outer walls of a container.

Claims 1-6, 9, 13, 15, 20, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wooster in view of Dorney and Greiner ('918)(Greiner).

Wooster discloses the invention except for the translucent/transparent outer wall. Dorney discloses a double wall cup having an outer wall of translucent material. Greiner discloses a double wall bowl with an outer transparent wall. It would have been obvious to modify the material of the outer wall of Wooster to be translucent or transparent in order to see an item placed within the space between the inner and outer walls of a container.

Claims 7, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wooster in view of Dorney and Greiner as applied to claims 1 and 5 above, and further in view of Hepburn.

The combination discloses the invention except for expanded polystyrene in the inaccessible portion of the channel and the outer wall being smaller in dimension at the bottom than at the top. Hepburn discloses in Fig. 5 and 6 a cooler wherein the inner and outer walls

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define a channel therebetween with expanded polystyrene located in a lower region of the cooler, the outer wall is tapered to be more narrow at the bottom. It would have been obvious to add expanded polystyrene in order to increase the insulation value to prevent food spoilage. It would have been obvious to taper the walls in order to nest the containers to form a more compact way to store a series of empty containers. Also, no criticality is associated with the slight dimensional change shown by the drawings of the present invention. It would have been obvious by design choice to slightly vary dimensions of the container so that the outer wall is slightly smaller in dimension at the bottom than at the top.

Claims 7, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris 1 or Morris 2 in view of Hepburn.

Morris 1 and Morris 2 both disclose the invention except for expanded polystyrene in the inaccessible portion of the channel and the outer wall being smaller in dimension at the bottom than at the top. Hepburn discloses in Fig. 5 and 6 a cooler wherein the inner and outer walls define a channel therebetween with expanded polystyrene located in a lower region of the cooler, the outer wall is tapered to be more narrow at the bottom. It would have been obvious to add expanded polystyrene in order to increase the insulation value to prevent food spoilage. It would have been obvious to taper the walls in order to nest the containers to form a more compact way to store a series of empty containers. Also, no criticality is associated with the slight dimensional change shown by the drawings of the present invention. It would have been obvious by design choice to slightly vary dimensions of the container so that the outer wall is slightly smaller in dimension at the bottom than at the top.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oxley.

Oxley discloses the invention except for the outer wall being smaller in dimension at the bottom than at the top. No criticality is associated with the slight dimensional change shown by the drawings of the present invention. It would have been obvious by design choice to slightly vary dimensions of the container so that the outer wall is slightly smaller in dimension at the bottom than at the top.


Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris 1 or Morris 2 in view of Barhite.

Morris 1 and Morris 2 disclose the invention except for the lid ridge. Barhite teaches a lid ridge. It would have been obvious to add the lid ridge to provide a tighter connection between the lid and the container.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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Any inquiry concerning this communication of earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703) 308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

December 13, 2002